

ACTION BY: Regional Offices  
State Agencies

Civil Rights Compliance and Enforcement  
in the Summer Food Service Program

TABLE OF CONTENTS

	<u>Page</u>
I PURPOSE .....	1
II AUTHORITY .....	1
III POLICY .....	2
IV DEFINITIONS .....	2
V INTERGOVERNMENTAL AGREEMENTS .....	6
A Formal Agreements .....	6
B Responsibilities .....	6
C Interagency Coordination .....	7
VI PUBLIC NOTIFICATION .....	7
A General .....	7
B State Agency Responsibilities in Implementing the Public Notification System .....	7
VII DATA COLLECTION AND MAINTENANCE .....	8
A General .....	8
B Determining the Number of Potential Eligible Beneficiaries .....	9
C Collecting and Maintaining Actual Beneficiary Data .....	9
VIII COMPLIANCE REVIEWS .....	9
A Preaward Compliance Reviews .....	10
B Routine (Postaward) Compliance Reviews .....	11
C Special Compliance Reviews .....	14
D Compliance Work Plan .....	15

<b>DISTRIBUTION:</b> AD,F1,A,E	<b>MANUAL MAINTENANCE INSTRUCTIONS:</b> New Instruction. Insert in Manual.	<b>RESPONSIBLE FOR PREPARATION AND MAINTENANCE:</b> CND-100	Page i 3-8-84
-----------------------------------	---	--	------------------

	<u>Page</u>
IX CIVIL RIGHTS TRAINING .....	16
A FNSRO Responsibilities .....	16
B State Agency Responsibilities .....	16
X COMPLAINTS .....	16
A Procedure for Filing Complaints of Discrimination .....	17
B Preliminary Inquiry or Investigation .....	17
C Closing Letter to Complainant .....	19
D Closure of Complaint File .....	20
XI ASSURANCES .....	20
A General .....	20
B Required Content of Agreements .....	20
XII RESOLUTION OF NONCOMPLIANCE .....	21
A Examples of Discrimination .....	22
B Achieving Voluntary Compliance .....	22
XIII OFFICE OF MANAGEMENT AND BUDGET APPROVAL .....	24
EXHIBIT	
A Example of Form DOJ-453.	

ACTION BY: Regional Offices  
State Agencies

Civil Rights Compliance and Enforcement  
in the Summer Food Service Program

I PURPOSE

This Instruction:

A Promulgates the program policy, and provides guidance on nondiscrimination in the administration of the Summer Food Service Program (SFSP) of the U.S. Department of Agriculture.

B Delegates authorities and specifies the responsibilities, requirements and procedures necessary to ensure Federal, State and local compliance with the provisions of Title VI of the Civil Rights Act of 1964 and this Instruction.

C Specifies minimum program requirements and procedures to ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964 and Departmental policy and regulations.

D Disseminates the Child Nutrition Division's (CND) philosophy that all eligible children shall have equal access, regardless of race, color, sex, age, handicap, or national origin, to the benefits available under the SFSP.

II AUTHORITY

A Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000 d to 2000 d-6 (Supp. V 1975).

B Executive Order 11764, 3A CFR 124 (1974 Compilation), reprinted in 42 U.S.C. 2000 d-1 annot (Supp. V 1975).

C USDA Regulation implementing Title VI of the Civil Rights Act of 1964, as amended on January 30, 1975, 7 CFR 15 Subpart A and Subpart C.

D Attorney General's Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964, 28 CFR 50.3.

E Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs Regulations under Title VI of the Civil Rights Act of 1964, 28 CFR 42.401 to 42.415.

<b>DISTRIBUTION:</b> AD,F1,A,E	<b>MANUAL MAINTENANCE INSTRUCTIONS:</b> New Instruction. Insert in Manual.	<b>RESPONSIBLE FOR PREPARATION AND MAINTENANCE:</b> CND-100	Page 1 3-8-84
-----------------------------------	---	--	------------------

F     USDA Regulations implementing Title IX of the Education Amendment of 1972, 7 CFR 15a.

G     Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112).

H     Age Discrimination Act of 1975 (Public Law 94-135).

I     Executive Order 12250, 3 CFR 124 (1980 Compilation).

### III   POLICY

The CND is committed to ensuring that program benefits are made available to all eligible individuals without regard to race, color, national origin, sex, age, or handicap.

### IV   DEFINITIONS

A     Applicant. A public or private nonprofit school food authority; a State, county, local or municipal government; or a residential camp that submits a written application for participation to an agency administering the SFSP.

B     Assurance. A clause in the Federal-State agreement (Form FNS-74, Federal-State National School Lunch Act and Child Nutrition Act Agreement) and administering agency-institution agreement which legally commits the State agency and institution to administer the SFSP in accordance with the Civil Rights Act of 1964 and this Instruction.

C     Beneficiaries. Those children to whom meals are served under the SFSP.

D     Bilingual Capability. Appropriate bilingual personnel and/or materials are available as needed to limited or non-English communicating persons that will ensure equal opportunity for participation in the program by eliminating any information or communication barriers.

E     Caps. Residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule of organized cultural or recreational programs for enrolled children between meal Services.

F     Children. Persons 18 years of age and under, and persons over 18 years of age who are determined by a State education agency or a local public education agency of a State to be mentally or physically handicapped and who participate in a public or nonprofit private school program established for the mentally or physically handicapped.

G Civil Rights Act and Regulations. Title VI of the Civil Rights Act of 1964 and other authorities as outlined in section II, above.

H CND. The Child Nutrition Division, which is the entity within FNS responsible for administering the SFSP.

I Complainant. Any person or group of persons that allege discrimination on the basis of race, color, national origin, sex, age, or handicap in the delivery of program benefits and services by a State agency, institution, or facility.

J Complaint. A verbal or written allegation of discrimination which indicates that the SFSP is administered or operated in such a manner that results in disparity of treatment or delivery of benefits or services provided to persons or groups of persons because of their race, color, national origin, sex, age, or handicap.

K Compliance Review. A review of the State agency, sponsor, or site's operation of the SFSP to ensure compliance with Title VI of the Civil Rights Act of 1964 and regulations.

L Compliance Work Plan. A written plan submitted annually showing the number of civil rights compliance reviews scheduled for the following fiscal year, and work years allocated for the review activity and civil rights training.

M CREEOD. The Civil Rights and Equal Employment Opportunity Division, which is the entity within FNS that develops and coordinates the civil rights policy in the Agency.

N Discrimination. Any distinction of one person or a group of persons from others, either intentionally, by neglect, or by the effect of actions or lack of actions based on race, color, national origin, sex, age, or handicap.

O Federal Assistance. Any funding, property, or aid which is provided to a State agency, sponsor, or site for the purpose of providing program benefits or services to children.

P Fiscal Year. The period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

Q FNS. The Food and Nutrition Service of the U.S. Department of Agriculture.

R FNSRO. The appropriate FNS Regional Office.

S     Grassroots Organization. Any organization at the local level which interacts directly with potential participants or beneficiaries, such as a community action program, civic organization, migrant group, church, neighborhood council, local chapter of National Association for the Advancement of Colored People (NAACP) or the League of United Latin American Citizens (LULAC), or other similar group.

T     Management Evaluation. The ongoing process used to monitor all aspects of program operations and administration at the FNSRO and State agency level.

U     Minority. A person or group of persons belonging to the protected classes covered by Title VI of the Civil Rights Act of 1964 and later specified by the Office of Management and Budget as American Indian or Alaskan Native, Asian or Pacific Islander, Black (Not of Hispanic Origin), and Hispanic. See paragraph FF, below.

V     Noncompliance. The finding that any requirement of the civil rights laws and regulations and/or this Instruction has not been satisfied.

W     Office of Equal Opportunity (OEO). The organizational unit under the Secretary of Agriculture, which reports to the Assistant Secretary for Administration, that has authority to develop and administer a comprehensive program to assure equal opportunity for all persons in all aspects of USDA programs under the Civil lights Act of 1964 and regulations.

X     Participants. Those children participating in the SFSP.

Y     Participating Entities. Those sponsors and sites which are provided assistance, services, or benefits under the SFSP.

Z     Potential Beneficiaries. Those children who are conceivably eligible to receive meals under the SPSP.

AA    Preaward Compliance Review. A desk review of the proposed operations of a program applicant prior to application approval.

BB    Preliminary Inquiry. An informal investigation conducted in order to gather information relating to a specific complaint. The complainant is interviewed and information regarding the allegations is used to ascertain if there are patterns of discrimination or discriminatory practices.

CC    Private Nonprofit. Tax exempt under the Internal Revenue Code of 1954, as amended.

DD    Program. The SFSP.

EE Racial/Ethnic Beneficiary Data. Data collected at sites, using the racial/ethnic group categories as defined in paragraph FF, below, and based on visual counts taken during the meal service or information supplied by the parents of beneficiaries.

FF Racial/Ethnic Categories. The designation of beneficiaries/potential beneficiaries by race, color, or national origin for the collection of racial/ethnic data as follows:

1 American Indian or Alaskan Native. A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition (includes Aleuts and Eskimos).

2 Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

3 Black (Not of Hispanic Origin). A person having origins in the black racial groups of Africa.

4 Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

5 White (Not of Hispanic Origin). A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

GG Routine (Postaward) Compliance Review. A review that is conducted of State agencies as a part of the management evaluation process and of institutions and facilities as a part of the management evaluation or program review processes to ensure correctness of the information provided, and compliance with the Civil Rights Act of 1964 and regulations.

HH Session. A specified period of time during which an enrolled group of children attend a camp.

II SFSP. The Summer Food Service Program administered by FNS.

JJ Site. A physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.

KK Sponsor. A public or private nonprofit school food authority; public or private nonprofit residential summer camp; or unit of local, municipal, county or State government, which develops a special summer or other school vacation program providing food service similar to that available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the program. (Sponsors are referred to in the National School Lunch Act as 'service institutions.)

LL State. Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

MM State Agency. The State educational agency or an alternate State agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the program within the State.

#### V INTERGOVERNMENTAL AGREEMENTS

Since Title VI requirements apply to all Federal grants, each grantor agency is responsible for implementing the requirements of the Department of Justice Regulations 28 CFR 42. To eliminate any duplication of effort on the part of these agencies, cooperative agreements will be negotiated between Federal Departments for their agencies that provide grants to common State agencies and institutions. Such agreements will designate a cognizant agency and specify the responsibilities and relationships of each organization.

A Formal Agreements. If the CND has reason to believe that another Federal agency has the responsibility for monitoring the Title VI compliance of agencies for which the CND is also responsible, the Division will notify CREEOD to request that a formal agreement be developed. The CREEOD will notify the Department's OEO of the request. Subsequent to meetings with representatives of the CREEOD and the CND, OEO will contact the involved department and agency to begin negotiation of agreement. During the negotiation process, the CREEOD and the CND will be kept informed of the progress of the negotiations. Once the agreement has been put into final draft form, all involved parties will meet to discuss the agreement and the resulting relationships to assure all parties agree on the division of responsibilities and have a common understanding of the provisions of the agreement.

B Responsibilities. Although cooperative agreements may result in the elimination of duplication of efforts in some areas of compliance enforcement, they do not relieve either agency of its responsibility to assure compliance with Title VI for all of its grant recipients. CND will be responsible for assuring Title VI enforcement in all of its grant recipients. This will involve either



direct action on the part of the CND or close monitoring of the activities of the cooperating agency with which there is a formal agreement. All formal agreements shall clearly specify each agency's responsibilities for action and for coordination with the other involved agency,

C Interagency Coordination. Coordination between Federal entities does not have to be governed by formal agreements. Instead, agencies may share data and information on an informal basis. If an instance of noncompliance or discrimination is found in a program institution or facility, all those Federal agencies providing funds to that institution or facility will be notified. Such cooperative arrangements will be dictated by the needs and resources of the involved agencies.

## VI PUBLIC NOTIFICATION

### A General. Each State agency shall:

1 Take positive and specific actions to implement a public notification system throughout its jurisdiction which encourages participation by potentially eligible sponsors and sites and informs potential beneficiaries, particularly minorities, of the availability of the SFSP.

2 As part of its program expansion responsibilities outlined in 7 CFR 225.6(g), ensure that potentially eligible service institutions that have not previously participated are informed about the SFSP.

3 Identify rural areas, Indian tribal territories, and areas with a concentration of migrant farm workers who qualify for the program and actively seek eligible sponsors to serve such areas.

4 Ensure that all participating sponsors inform potential beneficiaries, particularly minorities, about the SFSP in accordance with 7 CFR 225.21(c), including the provisions for nondiscrimination in the program and, in the case of camps, the procedures for filing a complaint.

B State Agency Responsibilities in Implementing the Public Notification System. To ensure that the State agency is reaching all potentially eligible persons, with an emphasis on minorities, the State agency's public notification system shall meet the following standards:

1 All published information concerning the program or program activities that is made available to the public shall include a statement that the program is available to all without regard to race, color, national origin, sex, age, or handicap. The statement shall be in a prominent place in each publication, which includes all leaflets, brochures, bulletins, and newspaper announcements.

2 All information concerning the program or program activities that is made available to the public by other forms of communication, such as radio and television announcements, shall also include the nondiscrimination statement and procedures for filing a complaint.

3 Appropriate translation of information such as application procedures, eligibility criteria, benefits available, and other program information, shall be provided upon request to non-English speaking potential participants and beneficiaries.

4 Minority and grassroots organizations shall be advised of the program's availability and the nondiscrimination policy. In addition, the State agency shall provide minority and grassroots organizations with a listing of all participating sponsors within its jurisdiction upon request.

5 If photographs or other graphics are used to provide information concerning the program or program activities, they shall convey the message of equal opportunity by displaying beneficiaries of different minority groups.

6 All sponsors and their sites shall be required to:

a Display in a prominent place the nondiscrimination poster developed by USDA or an FNS-approved poster.

b Have the capability of providing information in the appropriate translation concerning the availability and nutritional benefits of the SFSP, as needed.

c Make program information available to the public upon request.

d Provide the nondiscrimination statement and procedures for filing a complaint in any information concerning the program or program activities directed to parents of beneficiaries and potential beneficiaries.

## VII DATA COLLECTION AND MAINTENANCE

A General. The State agency shall:

1 Ensure that racial/ethnic beneficiary data are collected and maintained on file for 3 years for all sponsors within its jurisdiction. These data shall include the number of actual beneficiaries and the estimated number of potential eligible beneficiaries by racial/ethnic category.

2 Use these data during routine compliance reviews to determine how effectively the program is reaching potential eligible beneficiaries, identify areas where additional outreach is needed, and assess sponsor compliance.

B Determining the Number of Potential Eligible Beneficiaries. The number of potential eligible beneficiaries by racial/ethnic category for the area served by each sponsor shall be determined each year. Data concerning the number of potential eligible beneficiaries, along with identification of all sources of the information, shall be updated annually and maintained on file for 3 years. Sources might include census data or public school enrollment data.

C Collecting and Maintaining Actual Beneficiary Data. Actual beneficiary data by racial/ethnic category for each site under a sponsor's Jurisdiction shall be collected by the sponsor each year. Sponsors of residential camps shall collect and maintain this information separately for each session of the camp. For all other sites, the sponsor shall count the participating children at least once during the site's operation. Visual identification may be used by the sponsor to determine a beneficiary's racial/ethnic category, or the parents of a beneficiary may be asked to identify the racial/ethnic group of their child.

For collection purposes, a beneficiary may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. Parents of beneficiaries may be asked to identify the racial/ethnic group of their child only after it has been explained, and they understand, that the collection of this information is strictly for statistical reporting requirements and has no effect on the determination of their eligibility to receive benefits under the program.

Once collected, actual beneficiary data shall be maintained on file by the sponsor. Data, as well as documentation for the data, shall be retained by the sponsor for the required 3 years. The data shall be maintained using safeguards which prevent its use for discriminatory purposes. Such safeguards include allowing access to program records containing this data to only authorized personnel.

#### VIII COMPLIANCE REVIEWS

The FNSRO's and State agencies shall conduct compliance reviews to determine whether program delivery is in compliance with the requirements of USDA Title VI implementing regulations, 7 CFR 15, and this Instruction. The FNSRO's shall assure State agency compliance; State agencies shall assure sponsor and site compliance. Where FNSRO's directly administer the program, FNSRO's shall assure sponsor and site compliance.

Compliance reviews shall be conducted as a part of each administering agency's procedures for approving program applicants and monitoring program compliance. The Headquarters staff will review FNSRO compliance as a part of the overall assessments of regional operations. FNSRO's shall review State agency compliance as a part of their procedure for executing Federal-State agreements and as a part of the management evaluation process. State agencies and, where applicable, FNSRO's shall review sponsor and site compliance as a part of their procedures for determining eligibility for participation based on the requirements of 7 CFR 225.8 and assuring compliance with all program regulations based on the review requirements of 7 CFR 225.9.

A Preaward Compliance Reviews. The FNSRO's shall perform thorough desk reviews of applications from State agencies which did not participate in the SFSP during the previous year to determine if the applicants are in compliance with Title VI. Similarly, State agencies shall perform thorough desk reviews of applications from sponsors. These reviews shall be based on information provided by applicants in their official application for program funds. No Federal funds shall be made available to a State agency or sponsor until a preaward compliance review has been conducted and the applicant is determined to be in compliance with Title VI. At a minimum, the following data shall be analyzed during the preaward compliance review:

- 1 An estimate of the racial/ethnic makeup of the population to be served.
- 2 Efforts to be used to assure that minority populations have an equal opportunity to participate.
- 3 Efforts to be used to contact minority and grassroots organizations about the opportunity to participate.
- 4 A listing of any Federal agency providing financial support to the applicant.

Those sponsors whose applications are determined to be incomplete shall be notified by the FNSRO or State agency, as appropriate, within 15 days of receipt of their application. This notification shall specify the additional information needed to complete the application.

The applicant shall then be notified of the approval or denial of the application within 30 days of receipt of a completed application. Based on the information contained in the completed application or obtained by a phone call to the appropriate person, a special on-site review may be conducted to determine Title VI compliance.

B Routine (Postaward) Compliance Reviews. The routine compliance review is the single most important phase of an effective Title VI enforcement plan. Routine reviews of program operations completed as a part of the overall management evaluation and program review process shall be the vehicle used to determine Title VI compliance. These reviews shall evaluate all phases of the operation based on the current management evaluation and review requirements as specified in 7 CFR 225.9.

1 Coverage and Frequency.

a FNSRO's shall review all State agencies within their region and a sampling of local sponsors and sites under those State agencies as a part of the management evaluation process. In States where FNSRO's directly administer the program, FNSRO's shall conduct civil rights compliance reviews of participating sponsors and sites as a part of the program review process.

b State agencies shall conduct civil rights compliance reviews of participating sponsors and sites when they conduct program reviews.

2 Selection Criteria. Possible problems in civil rights compliance need to be considered within the overall assessment of program operations used to select sponsors and sites for review. Indicators of possible problems in civil rights compliance may include, but not be limited to, the following:

a Low minority participation in a high minority populated area.

b One or more discrimination complaints filed against the sponsor or site in the past 3 years.

c Indications of program problems received during discussions with State officials or other interested parties.

d Findings from previous reviews by the State agency.

e Previously unreviewed sponsors or sites.

f Newly approved sponsors or sites.

g Sponsors or sites located in areas with diversified minority populations.

h Sponsors or sites located in areas with a significant minority population.

i Admission requirements or procedures which restrict or deny enrollment.

3      Review Content. Title VI compliance is to be one phase of the total management evaluation and program review process. State agency compliance shall be determined during a management evaluation of the State agency. Sponsor and site compliance shall be determined during each program review of the sponsor's or site's total program operation. State agencies should make every reasonable effort to contact a minority or grassroots organization located within the community of each sponsor reviewed as a part of a sponsor's program review. Whenever a management evaluation or a program review is performed, the following items must be determined at a minimum:

a      State Agency Management Evaluations.

- (1)    How many sponsors or sites have been reviewed by the State agency?
- (2)    What aspects of Title VI compliance are covered in the reviews being performed?
- (3)    How is the State agency ensuring that racial/ethnic data is being collected and maintained by sponsors in accordance with section VII, above?
- (4)    Is there a public notification system which meets the requirements specified in section VI, above?
- (5)    Does the complaint procedure meet the requirements of section X, below?
- (6)    What, if any, lawsuits have been filed against the State agency alleging discrimination on the basis of race, color, sex, age, handicap, or national origin?
- (7)    Is the State agency currently receiving or applying to receive Federal assistance from any other Federal agencies? If so, please describe.
- (8)    Were any civil rights compliance reviews of the State agency performed by agencies other than FNSRO within the past year? If so, please describe.
- (9)    Has training been provided to all new employees and to current employees to assure that these persons are competent in Title VI enforcement? If so, when? Describe how many persons were trained and by whom, and provide an overview of the training content.

(10) Is there a need for bilingual material or staff? If so, explain the need and how it is being addressed by the State agency.

b Sponsor Reviews.

(1) Are all the public notification requirements in section VI, above, being met, such as:

(a) Displaying USDA or FNS-approved poster?

(b) Providing informational materials in the appropriate translation concerning the availability and nutritional benefits of the program, as needed?

(c) Making available program information to the public upon request?

(d) Providing a nondiscrimination statement and a procedure for filing a complaint in information concerning the program and program activities directed to parents of beneficiaries and potential beneficiaries ?

(2) Are all the data collection and maintenance requirements in section VII, above, being met, such as:

(a) Determining the number of potential eligible beneficiaries by racial/ethnic category for the area served by the sponsor each year?

(b) Collecting actual beneficiary data by racial/ethnic category for each site under the Jurisdiction of the sponsor each year?

(c) Maintaining these data on file for the required 3 years?

(3) Are there any requirements or procedures which restrict or deny enrollment on the basis of race, color, sex, age, handicap, or national origin?

(4) Are denied free and reduced price applicants disproportionately composed of minority groups?

c Site Reviews.

(1) Are all public notification requirements in section VI, above, being met, such as:

(a) Displaying USDA or FNS-approved poster?

(b) Providing information in the appropriate translation concerning the availability and nutritional benefits of the program, as they are needed?

(c) Making available program information to the public upon request?

(d) Providing the nondiscrimination statement and the procedure for filing a complaint in information concerning the program and program activities directed to parents of beneficiaries and potential beneficiaries?

(2) Does the site serve meals to all attending children equally, regardless of the child's race, color, sex, age, handicap, or national origin?

(3) Does the site allow all children equal access to its services and facilities regardless of race, color, sex, age, handicap, or national origin?

4 Reports. The results of this review shall be written up as part of the management evaluation or program review. The FNSRO reports of State agency management evaluations shall be forwarded to CND upon completion. State agency review reports on sponsors and sites shall be maintained in the reviewer's office and are subject to review when that State agency's compliance is evaluated.

5 Corrective Action. Findings in the compliance report which indicate probable noncompliance shall be handled according to procedures for resolution of noncompliance discussed under section XII, below.

C Special Compliance Reviews. On occasion, special compliance reviews will be necessary. These reviews will be conducted either individually or jointly by a representative of the OEO and FNS, and may be unannounced. These reviews will be conducted when:



1        There is a need to follow up on noncompliance findings from routine and preaward reviews requiring additional information and in-depth examination of specific aspects of program operations.

2        Statistical data indicates that a particular minority group is not participating in or benefiting from the program to an extent indicated by the population potentially eligible to participate in or benefit from the program.

3        The Director of OEO or CREEOD, the Administrator of FNS, or the Secretary of Agriculture requests a review.

4        Reports of noncompliance made by other agencies need to be substantiated.

5        Patterns of complaints of discrimination have developed that require followup.

D        Compliance Work Plan. Each year the CND will submit a Compliance Work Plan to the CREEOD which details the annual work plan for compliance reviews. The plan shall address the civil rights compliance review activity at the Federal level of review responsibility. Therefore, all FNSRO's shall provide the CND the required information listed below by May 1 of each year. The required information is as follows:

1        The number of FNSRO civil rights reviews of State agencies conducted during the prior fiscal year, and the number, location, and month of all planned civil rights reviews for the current fiscal year. In addition, the number of workyears utilized during the prior fiscal year and expected to be utilized during the current fiscal year to conduct such reviews must be included.

2        The number of FNSRO civil rights reviews of sponsors and sites conducted during the prior fiscal year in States where FNSRO's directly administer the program, and the number, location and month of all planned civil rights reviews for the current fiscal year. In addition, the number of workyears utilized during the prior fiscal year and expected to be utilized during the current fiscal year to conduct such reviews must be included.

3        Specific plans for civil rights training at the FNSRO, State agency, sponsor and site levels for the current fiscal year. The agenda and number of persons to attend such training must be provided.

## IX CIVIL RIGHTS TRAINING

In order for monitoring of any phase of program operations to be effective, those persons carrying out the monitoring function must be thoroughly familiar with all applicable requirements and understand the proper procedure to be followed in implementing the phase of operations they are reviewing. Persons responsible for reviewing Title VI compliance must receive training to assist them in performing their review responsibilities. This training should be carried out as part of ongoing technical assistance.

A FNSRO Responsibilities. The FNSRO's shall be responsible for training the State agency staffs to include Title VI compliance in all aspects of program operations. The Title VI compliance training shall include all the basic requirements of Title VI listed in the Department's implementing regulations, 7 CFR 15, and this Instruction. Where FNSRO's directly administer the program, FNSRO's shall be responsible for training their sponsors' staffs in the areas of Title VI compliance. Specific subject matter shall include, but not be limited to, the following:

- 1 Collecting and using data.
- 2 Effective public notification systems.
- 3 Complaint procedures.
- 4 Compliance review techniques.
- 5 Resolution of noncompliance.

B State Agency Responsibilities. State agencies shall be responsible for training their sponsors' staffs in these areas of Title VI compliance covered in paragraph A, above.

## X COMPLAINTS

All written or verbal complaints alleging discrimination on the basis of race, color, national origin, sex, age, or handicap shall be processed within 90 days of receipt in the manner prescribed by this Instruction.

The OEO has been delegated the authority to determine the manner in which all civil rights complaints are to be handled including investigations, agency inquiries, compliance reviews, or other means. Regardless of where the complaints are filed, they must be forwarded immediately to the CREEOD, for submission to the OEO. All complaints must reach OEO within 10 days of receipt by the State agency or FNSRO. The OEO will prepare and issue letters of acknowledgment to the complainants.

A Procedure for Filing Complaints of Discrimination.

1 Right To File a Complaint. Any person alleging discrimination based on race, color, national origin, sex, age, or handicap has a right to file a complaint within 180 days of the alleged discriminatory action. Under special circumstances this time limit may be extended by OEO.

2 Acceptance. All civil rights complaints, written or verbal, shall be accepted and forwarded to the CREEOD through FNSRO. It is necessary that the information be sufficient to determine the identity of the agency or individual towards which the complaint is directed, and to indicate the possibility of a violation. Anonymous complaints should be handled as any other complaints.

3 Verbal Complaints. In the event a complainant makes the allegations verbally or through a telephone conversation and refuses or is not inclined to place such allegations in writing, the person to whom the allegations are made shall write up the elements of the complaint for the complainant. Every effort should be made to have the complainant provide the following information:

a Name, address, and telephone number or other means of contacting the complainant.

b The specific location and name of the entity delivering the service or benefit.

c The nature of the incident or action that led the complainant to feel discrimination was a factor, or an example of the method of administration which is having a disparate effect on the public, potential participants, or participants.

d The basis on which the complainant feels discrimination exists (race, color, national origin, sex, age, or handicap).

e The names, titles, and business addresses of persons who may have knowledge of the discriminatory action.

f The date(s) during which the alleged discriminatory action occurred, or if continuing, the duration of such actions.

4 Forms. State agencies may develop complaint forms, but the use of such forms shall not be a prerequisite for acceptance of a complaint.

B Preliminary Inquiry or Investigation. The OEO has the responsibility to determine if an investigation or a preliminary inquiry will be conducted initially.

1     Preliminary Inquiry.

A     The FNSRO shall:

- (1)    Perform a preliminary inquiry on all complaints referred by OEO within 30 days of the OEO request.
- (2)    Prepare a written report of the inquiry with relation to the specific allegations of the complaint and include a summary of all interviews and record examinations.
- (3)    Submit the report of the inquiry with suggested corrective action or recommendations to the CREEOD with a copy to the CND.

b     The CREEOD will:

- (1)    Review and approve the preliminary inquiry report.
- (2)    Submit to OEO, if no finding of discrimination is substantiated, a copy of the preliminary inquiry report, a letter recommending closure, and a proposed closing letter to the complainant with copies to the CND.
- (3)    Prepare an executive summary of the preliminary inquiry report containing findings and recommended corrective action, if the report shows findings of discrimination, noncompliance with civil rights regulations, or program deficiencies.
- (4)    Submit the executive summary and the proposed corrective action through the CND to OEO for its approval.
- (5)    Submit a request that corrective action be taken within 30 days through the CND to the FNSRO.
- (6)    Review the corrective action implemented and prepare the closing correspondence if the corrective action is appropriate.

2     Investigations.

a     The OEO will:

- (1)    Investigate all complaints of discrimination not referred for preliminary inquiry.

- (2) Send the Notice of Investigation to the CREEOD.
- (3) Prepare and forward copies of the investigation report to the CREEOD after the investigation is completed.
- (4) Determine the adequacy of corrective action to remedy cases of noncompliance.

b The Director, CREEOD, will:

- (1) Immediately forward a copy of the Notice of Investigation to the appropriate FNSRO with a copy to the CND.
- (2) Review and analyze the investigation report to determine whether the report provides evidence of discrimination or civil rights noncompliance.
- (3) Submit to OEO, if no finding of discrimination is substantiated, a letter recommending closure and a proposed closing letter to the complainant with copies to the CND.
- (4) Prepare an executive summary of the investigation report containing findings and recommended corrective action if the report shows findings of discrimination, noncompliance with civil rights regulations, or program deficiencies.
- (5) Submit the executive summary and the proposed corrective action through the CND to OEO for its approval.
- (6) Submit a request that corrective action be taken within 30 days through CND to the FNSRO.
- (7) Review the corrective action implemented and prepare the closing correspondence if the corrective action is appropriate.

C Closing Letter to Complainant. The proposed closing letter prepared for the signature of the Director, OEO, will contain the following:

- 1 A brief description of the allegation(s).
- 2 The scope of the inquiry or investigation conducted.

3 Fact and information from the inquiry or investigation report refuting or substantiating each allegation.

4 Closing statement summarizing the basis on which the determination was made.

D Closure of Complaint File. The Director, OEO, is responsible for closure of all Title VI complaint files. Once copies of the closure letters are received by the CREEOD, they will be forwarded to the appropriate FNSRO with a copy to the CND.

#### XI ASSURANCES

The CND requires that assurances of compliance with the Civil Rights Act of 1964 be given by agencies and entities administering the SFSP at all levels. Compliance with the Civil Rights Act of 1964 shall be determined by FNSRO's or by State agencies before an applicant sponsor or site receives Federal financial assistance to carry out program operations.

A General. A civil rights assurance shall be incorporated into all agreements between FNSRO's and State agencies, and between State agencies and sponsors. For State agencies, this assurance shall be incorporated into the written agreements required in 7 CFR 225.8. The agreement shall state that the program applicant shall compile data, maintain records, and submit reports as required, to permit effective enforcement of the Civil Rights Act of 1964 and regulations. This agreement permits authorized USDA personnel to review such records, books, and accounts as needed during normal working hours to ascertain compliance. The FNSRO shall be responsible for reviewing, approving, and monitoring FNSRO/State agency agreements. State agencies shall be responsible for reviewing, approving, and monitoring State agency/sponsor agreements.

B Required Content of Agreements. All agreements shall contain the following language or FNS-approved language which incorporates the assurance contained herein:

The program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 42 U.S.C. 2000d et seq.) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), Department of Justice (28 CFR Parts 42 and 50) and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the grounds of race, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for

which the program applicant receives Federal financial assistance from the Department; and hereby gives assurance that it will immediately take any measures necessary to effectuate this agreement.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants and loans of Federal funds; reimbursable expenditures; grant or donation of Federal property and interest in property; the detail of Federal personnel; and the sale and lease of, and the permission to use, Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the program applicant by the Department. This includes any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the program applicant agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of Title VI and permit authorized USDA personnel during normal working hours to review such records, books and accounts as needed to ascertain compliance with Title VI. If there are any violations of this assurance, the Department of Agriculture, Food and Nutrition Service, shall have the right to seek Judicial enforcement of this assurance. This assurance is binding on the program applicant, its successors, transferees, and assignees as long as they receive assistance,, or retain possession of any assistance from the Department. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the program applicant.

## XII RESOLUTION OF NONCOMPLIANCE

Probable noncompliance is a factual finding that any civil rights requirement, as provided by USDA and Department of Justice regulations and this Instruction, is not being adhered to by an individual or agency. A finding of probable noncompliance may be the result of a routine compliance review, a special review, a preliminary inquiry or investigation or other type of monitoring process. When a State agency or local office is found to be in probable noncompliance, every effort shall be made to the fullest extent practicable to obtain voluntary compliance.

A     Examples of Discrimination. Discrimination is prohibited in all aspects of the delivery of program benefits. Some specific examples of prohibited discrimination and noncompliance with civil rights requirements are as follows:

1       Denial of an individual or household of any service or benefits provided under the program on the basis of race, color, national origin, age, sex, or handicap.

2       Distinction in the quality, quantity, or manner in which the benefits are provided on the basis of race, color, national origin, age, sex, or handicap.

3       Segregation or separate treatment of individuals in any manner related to the receipt of program benefits on the basis of race, color, national origin, age, sex, or handicap.

4       Use of criteria or methods of administration which have the effect of defeating or impairing the objectives of the SFSP according to race, color, national origin, age, sex, or handicap.

5       Selection of a site that has the effect of excluding individuals based on race, color, national origin, age, sex, or handicap from the benefits of the program.

B     Achieving Voluntary Compliance. Once probable noncompliance is determined, steps shall be taken immediately to obtain voluntary compliance. The effective date of the finding of probable noncompliance is the date of the compliance review or inquiry. The following action shall be taken to achieve voluntary compliance.

1       The State agency shall:

a       Give immediate notice to the sponsor indicating the terms of noncompliance and the action required to correct the situation.

b       Submit to the Regional Administrator, Form DOJ-453, Report of Findings of Non-compliance (see Exhibit A, attached), with appropriate documentation attached, on all cases where corrective action has not been completed within 60 days of the finding.



2 FNSRO's shall:

- a Give immediate notice to the State agency indicating the terms of noncompliance and the action required to correct the situation.
- b Submit to the CREEOD, with copies to CND, Form DOJ-453, with appropriate documentation attached, on all cases where corrective action has not been completed within 60 days of the finding.
- c If the Regional Administrator determines that voluntary compliance cannot be achieved by negotiations with the State or sponsor, notify the CREEOD with a copy to CND.

3 CREEOD will:

- a Promptly notify OEO of any negotiations which have continued for more than 60 days and state the reason for the length of negotiations.
- b In consultation with CND, determine whether voluntary compliance efforts should continue to be pursued by the Regional Administrator. If so, prepare a letter for the FNS Administrator's signature to the State agency which includes:
  - (1) The area of probable noncompliance.
  - (2) Appropriate regulatory or guideline citations being violated in 7 CFR 15 and this Instruction.
  - (3) Thirty-day notice to resolve the matter and agree to corrective action.
  - (4) Warning that the matter is subject to legal actions.
- c If the letter from the Administrator fails to achieve compliance within the 30 days allowed, forward the complete case to OEO for formal enforcement action. Copies of the complete case shall be included for forwarding by OEO to the Office of the General Counsel and Department of Justice.

XIII OFFICE OF MANAGEMENT AND BUDGET APPROVAL

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980.

  
**Administrator**

Attachment

EXAMPLE OF FORM DOJ-453



DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION  
WASHINGTON, D.C. 20530

REPORT OF FINDINGS OF NON-COMPLIANCE

Page 1 of 1

(1) RECIPIENT NAME	(2) DATE OF FINDING	(3) CITY	(4) STATE	(5) FEDERAL PROGRAM	(6) BASIS CODE	(7) STATUS CODE	(8) TYPE CODE
SPECIMEN							
(9) REPORTING AGENCY	(10) DATE OF REPORT	(11) NAME AND TITLE REPORTING OFFICIAL		(12) DATE RECEIVED		DOJ #: (Leave blank for internal use only)	

This form has been changed in accordance with FPMR 101.11.11. and assigned integrity control number 0170.  
DOJ/AD

Form DOJ-453  
JAN 1978

INSTRUCTIONS FOR COMPLETING AGENCY REPORT OF FINDINGS OF NON-COMPLIANCE			
(1)	<u>Recipient Name:</u> The reporting agency will provide the name of the recipient of federal assistance against which the finding has been made.	(8)	<u>Type Code:</u> The reporting agency will indicate the type of discrimination found using the following codes: 01 - Services 02 - Employment 03 - Both services and employment  See 28 C.F.R. §42.402(l) of the Attorney General's Coordination Regulations for a definition of employment discrimination as it relates to Title VI. All other types of discrimination should be classified as "services" discrimination.
(2)	<u>Date of Finding:</u> The reporting agency will provide the date on which each finding was made by the agency civil rights office.		
(3) & (4)	<u>Location of Recipient:</u> The reporting agency will provide the location of the recipient of federal assistance against which the finding has been made. Both the city and state in which the recipient resides should be specified. Specified. City means any urban municipal area.		
(5)	<u>Federal Program:</u> The reporting agency will provide the common name of the program under which the recipient receives Federal funds (e.g., Food Stamps, AFDC, CETA, etc).	(9)	<u>Reporting Agency:</u> The reporting entity will fully identify itself. One report may be submitted for an entire Department (i.e., Department of Commerce) or several reports may be submitted by the various component grant agencies of that Department (i.e., Economic Development Agency, Department of Commerce). In either case, full identification is requested.
(6)	<u>Basis Code:</u> The reporting agency will indicate the grounds on which the finding of discrimination was based, using the following numerical codes: 01 - Race or Color 02 - National Origin Only one code need be reported per finding.	(10)	<u>Date of Report:</u> The reporting agency will specify the date on which the report was forwarded to the AAG.
(7)	<u>Status Code:</u> The reporting agency will indicate a stage of resolution for each finding using the following codes: 01 - Pending negotiation 07 - Under negotiation 08 - Scheduled for hearing 09 - Referred to DOJ for litigation 10 - Fund termination proceeding initiated 11 - Resolved	(11)	<u>Name and Title Reporting Official:</u> Each report should specify an official in the reporting agency who (a) is responsible for the accuracy of data contained in the report and (b) will act as liaison with DOJ concerning questions pertaining to the contents of the report.
		(12)	This is reserved for DOJ internal use and should be left blank.